90-776

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

DELCO L. CORNETT,
PETITIONER,

V.

MANUFACTURERS HANOVER TRUST COMPANY, SIMPSON THACHER & BARTLETT, JOHN W. OHLWEILER, SHERI FRUMER, WILLIAM P. MCCOOE, JOHN F. MCGILLICUDDY,
RESPONDENTS,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DELCO L. CORNETT
140 EAST 31ST STREET
NEW YORK, N.Y. 10016

PETITIONER

QUESTIONS PRESENTED FOR REVIEW

I. CAN A FEDERAL DISTRICT JUDGE IMPOSE A MONETARY SANCTION IN EXCESS OF $18,000.00 ON THE GROUNDS THAT THE PLEADING "DESCRIBES ONLY ONE ALLEGEDLY FRAUDULENTLY TRANSACTION AND CONSEQUENTLY DOES NOT SATISFY THE STATUTE'S REQUIREMENT OF A "PATTERN".

A. CAN A DISTRICT JUDGE IMPOSE A SANCTION UNDER RULE 11 BASED UPON ONE OTHER DISTRICT JUDGE'S INTERPRETATION OF THE MEANING OF "PATTERN" EVEN WHEN THE SUPREME COURT HAS RULED THAT THE DISTRICT JUDGE'S INTERPRETATION HAS NO SUPPORT IN EITHER THE TEXT OF THE STATUTE NOR IN THE LEGISLATIVE HISTORY.

II. HAS THE IMPOSITION OF A RULE 11 SANCTION IN EXCESS OF $18,000.00 BEEN AN ABUSE OF RULE 11.

A. DOES A LITIGANT HAVE A RIGHT TO A JURY WHEN A RULE 11 SANCTION AMOUNTS TO AN EXCESSIVE FINE.

III. DOES U.S.C.A. TITLE 42 §1983 REQUIRE AS A FUNDAMENTAL RIGHT OF DUE PROCESS THAT A LITIGANT BE GIVEN NOTICE AND BE GIVEN AN OPPORTUNITY TO BE HEARD BEFORE HE IS DEPRIVED OF A FUNDAMENTAL LEGAL RIGHT.

IV. DID THE RULING OF THE DISTRICT COURT AND THE RULING OF THE CIRCUIT COURT DEVIATE FROM THE LONG SETTLED RULE THAT A LOWER COURT CAN NOT OVERRULE A HIGHER COURT SUCH AS TO REQUIRE AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

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IN THE
SUPREME COURT OF THE UNITED STATES

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V.

MANUFACTURERS HANOVER TRUST COMPANY, Simpson Thacher & Bartlett, John W. Ohlweiler, Sheri Frumer, William P. McCooe, John F. Mcgillicuddy,

Respondents,

On petition For a Writ of Certiorari
to the United States Court of Appeals
For the Second Circuit

BRIEF FOR PETITIONER

- OPINIONS BELOW -

The Petitioner (hereinafter "Cornett" represents unto this Court that he is aggrieved by the Panel decision dated March 16, 1990 and which was rendered as an unreported summary order "not to be cited... in unrelated cases...".

That decision affirmed "substantially for the reasons stated in the Memorandum and order of Judge Richard Owen, dated April 25, 1989[SIC]" the district court's decision. The district court's decision Cornett v. Manufacturers Hanover Trust Company (684 F. Supp. 78 [S.D.N.Y. 1988]) was rendered on April 25, 1988 and amended on June 6, 1988.

- STATEMENT OF JURISDICTION -

The Panel decision was rendered on March 16, 1990. Thereafter Cornett filed a Petition for Rehearing pursuant to Federal Rules of Appellate Procedure 40 and a Suggestion for Rehearing En Banc pursuant to Federal Rules of Appellate Procedure 35. The Petition for Rehearing was denied on May 31, 1990. This Petition is filed within 90 days thereof. The jurisdiction of this Court is invoked pursuant to §28 U.S.C. 1254(1).

- STATUTES INVOLVED -

The following section of 18 U.S.C.A. 1961 et. seq. is involved:

"(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt."

The following section of 42 U.S.C.A. 1983 is involved:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the district of Columbia."

- STATEMENT OF THE CASE -

Cornett filed a complaint in the district court in September 1987 against the defendants under the RICO statute, 18 U.S.C.A. §1961 et. seq. and under the Civil Rights statute 42 U.S.C.A. §1983. The complaint is attached as Appendix "I". The defendants through their counsel filed a motion pursuant to Fed. Rules Civ. Proc. Rule 12(b)(6), 28 U.S.C.A. and pursuant to Fed. Rules Civ. Proc. Rule 11, U.S.C.A.

The district court judge subsequently dismissed Cornett's complaint stating:

> "the complaint... describes only one allegedly fraudulent transaction and consequently does not satisfy the statute's requirement of a 'pattern' ..."

The district court also dismissed Cornett's Civil Rights action ruling that a litigant has no due procees right to "notice" and a right "to be heard" before a state judge issues an injunction against him.

The Second Circuit panel affirmed based upon the memorandum decision of the district court.

- ARGUMENT -

A. THE DECISION OF THE DISTRICT COURT AND THE AFFIRMANCE OF THAT DECISION BY THE CIRCUIT PANEL DEPARTS FROM THE USUAL AND CUSTOMARY STANDARDS UNDER RULE 12(b)(6) AS TO CALL FOR THE EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

The accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of plaintiff's claim which would entitle plaintiff to relief was stated in Conley v. Gibson, 355 U.S. 41, 45-46, (1957).

Furthermore, in considering the correctness of dismissal for failure to state a claim, allegations of the complaint are to be taken as true. United States v. Mississippi, 380 U.S. 128.

The courts below have simply disregarded well settled law and ruled that even though not a single claim in the complaint (Appendix "I")is challenged by the defendants, as this Court has consistently ruled they can not be under a rule 12(b)(6) motion, the complaint was dismissed and a Rule 11 sanction in excess of $18,000.00 was imposed on Cornett.

The courts below have disregarded Rule 8 and the requirements of simple "notice pleading" and in effect ruled that through pinched and bizarre judicial interpretations of a complaint the complaint can be dismissed as frivolous.

B. THIS COURT HAS OVER-RULED THE THEORY PROPOUNDED BY THE COURTS BELOW ON THE QUESTION OF A RICO "PATTERN"

The district court dismissed the RICO claim on the grounds that "only one allegedly fraudulent transaction"

was stated in the complaint. The district court cited one other district judge's ruling in support of this interpretation. However, this Court in H.J., INC. v. Northwestern Bell Telephone Co., 109 S. CT. 2893 (1989) over-ruled this view. There is no rule more fundamental in law than the rule that a lower court can not over-rule a higher court. Yet in this case Cornett has had an $18,000.00 sanction imposed against him and upheld by a circuit court based upon the ruling of a district court that Cornett's complaint was frivolous even though the unanimous Supreme court ruled that two separate schemes or fraudulent transactions are not required in either the text of the statute nor in its legislative history.

C. THE COURTS BELOW HAVE IGNORED ONE OF THE MOST FUNDAMENTAL RIGHTS OF DUE PROCESS: THE RIGHT TO NOTICE AND THE RIGHT TO BE HEARD

Cornett in his complaint stated that

an injunction had been issued against him by a state court judge without giving him notice nor giving him an opportunity to be heard as was required by the state law and the United States constitution.

The district court judge simply ignored the pleading and dismissed the complaint stating that injunction did not emcompass federal proceedings since it was issued by a state judge. The signicant question was not the scope of the injunction but rather the fact that it was issued in total disregard of Cornett's due process rights.

D. RULE 11 SANCTIONS HAVE BECOME A TOOL OF TYRANNY TO ATTACK LITIGANTS.

Despite the fact that Cornett demanded a jury to decide whether any Rule 11 sanctions were appropriate the district court denied such a demand and based upon an affidavit submitted by the attorneys for the defendants awarded the

defendants in excess of $18,000.00. This Court can look at the complaint (Appendix "I") and readily ascertain that it is simply not rational to believe that the complaint can be considered "frivolous" when not a single claim is denied by the defendants. Additionally this Court has ruled that a valid RICO claim does not require two separate transactions or schemes.

This goes a long way in explaining why the circuit court ruled that the affirmance of the district court's dismissal based upon the requirements of a pattern in a RICO claim could not be cited in any other case.

It is nothing but a debauching of the American legal system to allow a district court to impose a sanction in excess of $18,000.00 and then have a circuit court uphold the decision but state that the affirmance can not be cited in any other case since obviously

the Supreme Court's decision over-ruling the the theory of multiple transactions would also be subject to Rule 11 sanctions.

E. RULE 11 HAS BEEN PERVERTED INTO A PERNICIOUS THREAT TO AMERICAN LIBERTY

While the stated goal of Rule 11 to streamline litigation by removing time-wasting and burdensome delaying tactics from the litigational process is laudable, in practice it has become nothing more than an all purpose tool of judicial abuse.

In this case Cornett has had a sanction in excess of $18,000.00 imposed for merely serving a complaint which the defendants have by their Rule 12(b)(6) motion admitted is true in every regard. However, the district judge need only cite one other district judge's interpretation of one aspect of the RICO statute and thereby rule the complaint is frivolous and impose a sanction

limited by nothing more than what he deems appropriate.

This theory of Rule 11 fails to take into account a number of relevant facts.

I. Judges themselves are often over-ruled on appeal. Certainly if a judge having all the benefits of his position can often misapprehend the law how can litigants be held to higher standards at the peril of bankrupting sanctions.

II. The RICO statute has numerous sections. Justice Brennan in his opinion in H.J., Inc. referred to a plethora of interpretations of pattern. By breaking the statute into its consituent parts it is always possible to find conflicts by various judges as to how to interpret each term.

III. One suggestion was made that if a litigant feels that sanctions were improperly imposed as in this case he

he should write his Congessman to have the law amended. However, if one circuit interprets the exact same words in a manner totally at odds with the interpretation of another circuit there is no way to amend the law since the exact same words are being held out to mean the exact opposite simultaneously.

IV. If the district judge interprets the same words in a manner diametrically opposed to the interpretaion given those words in another circuit a litigant must endure a bankrupting monetary sanction and take an appeal through the circuit court and then to the Supreme Court.

V. A Rule 11 sanction such as the one in this case amounting to in excess of $18,000.00 imposed on a pro se litigant amounts to an excessive fine which is prohibited by the United States Constitution.

VI. Precedents are over-ruled as circumstances change. At the beginning of this century the world was barely entering the modern age and a large proportion of the population was rural and agriculturally oriented. Today men have walked on the moon, cities have been leveled by atomic bombs and advanced computers become out-dated after six months. As circumstances change the law must likewise recognize the changes in society.

Rule 11 can not stop the changes and the attempt to prevent litigants by destroying them financially is misconceived and doomed to failure.

VII. Judges are not elected in the federal courts and a litigant must pursue his remedies when subjected to the pernicious abuse of rule 11 to the Supreme Court. The people are not able to vote out of office judges who abuse

Rule 11.

- CONCLUSION -

For the foregoing reasons, Petitioner Cornett contends that he has been aggrieved by the actions of the courts below.

The complaint should not have been dismissed and Rule 11 sanctions were improperly awarded.

Petitioner Cornett requests that his Petition for Certiorari be granted.

Respectfully Submitted,

Delco L. Cornett,
Petitioner

Delco L. Cornett

DELCO L. CORNETT
140 EAST 31ST Street
New YOrk, N.Y. 10016

Appendix "A"

Opinion Rendered: April 25, 1988

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DELCO L. CORNETT, PLAINTIFF, v. MANUFACTURERS HANOVER TRUST COMPANY, SIMPSON THACHER & BARTLETT, JOHN W. OHLWEILER, SHERI FRUMER, WILLIAM P. McCOOE, AND JOHN F. McGILLICUDDY, DEFENDANTS,	Civil Action #87 Civ. 7005 (RO) MEMORANDUM AND ORDER

By: Richard Owen, Judge
United States District Court

PUBLISHED: Cornett v. Manufacturers Hanover Trust Co.
684 F. SUPP. 78
(S.D.N.Y. 1988)

Before me is a pro se plaintiff's complaint seeking $1,000,000,000 compensatory damages on RICO and civil rights theories and $1,000,000,000 in punitive damages. Defendants move to dismiss for failure to state a claim under Fed.R. Civ.P 12(b)(6); all defendants besides

Justice McCooe of the New York State Supreme Court also move for sanctions under Fed.R.Civ.P. 11. Plaintiff named the following as defendants: Manufacturers Hanover Trust Co. and its chief executive officer, John F. McGillicuddy; Manufacturer's attorneys, Simpson Thacher & Bartlett; John Ohlweiler and Sheri Frumer, both attorneys at the firm; and Justice William P. McCooe.

Plaintiff Cornett alleges that Justice McCooe deprived him of his right of access to federal court, a violation of 42 U.S.C. §1983, by ordering that Cornett "not ... make any further motions or commence any new actions relating to the subject matter of this and the prior complaints without the permission of this Court which must be preceded by a motion with notice to defendant's counsel." In addition, plaintiff alleges that Manufacturers committed RICO violations under

18 U.S.C. §1961 et seq.; that attorneys Frumer and Justice McCooe conspired to threaten and tamper with him as a witness to "felonious acts" in violation of 18 U.S.C. § 1512; and that defendants engaged in mail fraud by filing "false and misleading documents with the New Nork State Supreme Court which stated that my charges of criminal acts by an officer of Manufacturers Hanover Trust Company were fabrications."

First, Justice McCooe's order does not encompass proceedings in federal court, but is instead directed to any future state court proceedings plaintiff might bring relating to plaintiff's allegations against Manufacturers. Accordingly, he has failed to show a deprivation of constitutional rights under 42 U.S.C. §1983 and his claim is dismissed under Fed.R.Civ.P. 12(b)(6).

Plaintiff's claims under RICO must

be dismissed as well. He has failed to plead the substantive elements of his RICO claim with any degree of particularity, as required in this circuit; see Anisfeld v. Cantor Fitzgerald & Co., Inc., 631 F. Supp. 1461, 1466 (S.D.N.Y. 1986). Moreover, the complaint with its attachment (a copy of a letter from plaintiff to defendant McGillicuddy describing the alleged fraud of Manufacturers' employees) describes only one allegedly fraudulent transaction and consequently does not satisfy the statute's requirement of a "pattern" of racketeering activity- let alone "enterprise." Creative Bath Products, Inc. v. Connecticut General Life Insurance Co., 837 F2d 561, 564(2d Cir. 1988); see also Anisfeld, supra, 631 F. Supp. at 1466.

Finally, plaintiff's allegations that the attorney defendants and Justice McCooe "did agree, conspire, and work in concert to threaten and tamper with a witness" must fail. Neither Justice McCooe's order,

nor attorney Frumer's oral request for such order, constitute intimidation, threats or misleading conduct with the intent to obstruct legal processes as described in 18 U.S.C. § 1512. The order, as described supra, was intended merely to control plaintiff's litigious conduct in state court. Accordingly, the witness tampering claim is dismissed as well under Fed.R. Civ.P. 12(b)(6).

From the foregoing, under Fed.R.Civ.P. 11 defendants Manufacturers, McGillicuddy, Simpson Thacher & Bartlett, and Ohlweiler and Frumer are hereby awarded the costs and attorneys fees incurred on this motion. The present action is the fourth in a series of suits against the same defendants (except Justice McCooe, who has been added here) arising out of the same alleged activities. All of the previous claims were dismissed in state court. Plaintiff can no longer rely on his pro se

status to avoid a finding that the complaint is frivolous or to avoid a conclusion that he had no reasonable basis for asserting the claims in his federal court complaint. See Cavallary v. Lakewood Sky Diving Center, 623 F.Supp. 242, 245-46 (S.D.N.Y. 1985). The said defendants are to file affidavits as to their costs and fees within fourteen days of the date of this Order; plaintiff may file appropriate papers in opposition within fourteen days thereafter.

So Ordered.

Dated: April 25, 1988

New York, New York

/s/ Richard Owen

United States District Judge

Appendix "B"

Order dated June 24, 1988

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DELCO L. CORNETT, PLAINTIFF v. MANUFACTURERS HANOVER TRUST CO., ET. AL., DEFENDANTS	Civil Action 87 Civ. 7005 (RO) Order

The request for more time to comply with the Court's order of April 25, 1988 is denied. So ordered.

/s/ R.O.
U.S.D.J.
6/24/88

Appendix "C"

Order dated October 31, 1988

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DELCO L. CORNETT,	)
	)Civil Action
PLAINTIFF	)87 Civ.
	)7005 (RO)
v.	)
	) ENDORSED
MANUFACTURERS HANOVER TRUST CO., ET. AL.,	) MEMORANDUM
	)
	)
DEFENDANTS	)

By: Richard Owen, Judge
United States District Court

Plaintiff's motion for reconsideration of this Court's April 25, 1988 Order is denied. The matter is hereby assigned to a magistrate to hear and report on sanctions to be awarded under Fed. R. Civ. P. 11. Sanctions may also include costs of litigating before the magistrate if the magistrate finds that plaintiff's questioning of defendant's costs has not been interposed in good faith. So ordered.

Dated: October 31, 1988
New York, New York

/s/ RICHARD OWEN
United States District Judge

Appendix "D"

Magistrate's Report and Recommendation

dated: April 20, 1989

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DELCO L. CORNETT, PLAINTIFF v. MANUFACTURERS HANOVER TRUST COMPANY, SIMPSON THACHER & BARTLETT, JOHN W. OHLWEILER, SHERI FRUMER, WILLIAM P. McCOOE AND JOHN F. McGILLICUDDY, DEFENDANTS,	)Civil Action)87 Civ.)7005 (RO)))REPORT AND)RECOMMENDA-)TION TO THE)HONORABLE)RICHARD OWEN

By: Sharon E. Grubin, United States Magistrate
United States District Court

By Memorandum and Order dated April 25, 1988 your Honor dismissed plaintiff's pro se complaint in this action for failure to state a claim and awarded defendants Manufacturers Hanover Trust Company, Simpson Thacher & Bartlett, John W. Ohlweiler, Sheri Frumer and John F. McGillicuddy (hereinafter "defendants") the costs and attorney's fees incurred on their motion

to dismiss pursuant to Fed. R. Civ. P. 11. By endorsed Memorandum of October 31, 1988 your honor denied a motion by plaintiff for reconsideration and directed the matter of the amount of sanctions to be assigned to a United States Magistrate. The matter was assigned to me on November 10, 1988.

The breakdown of the amounts of costs and attorney's fees sought by defendants, totalling $18,322.62, is set out in an affidavit of Albert X. Bader. Esq. sworn to May 9, 1988 ("Bader Affidavit"). Plaintiff submitted his response by affidavit sworn to January 5, 1989. I find the time spent by defendants' attorneys and billing rates used to have been reasonable. I also find that the disbursements were reasonably incurred. I therefore recommend that your Honor enter an order awarding defendants attorney's fees and costs in the amount of $18,322.62.

Defendants' attorneys have documented

their request with Simpson Thacher & Bartlett's detailed computer records of the work done on this matter showing time spent and description of work for each entry. The records show that the bulk of the work was done by an associate of the firm who was a 1983 graduate of the Harvard Law School and whose time was charged during the relevant period at $160 per hour. (A small number of hours was charged at $185 per hour after a firm rate increase in January 1988.) This associate spent a total of 73 hours on this matter which represent 83% of the total hours of the firm on this case. Two partners of the firm supervised the associate and reviewed her work. The total number of hours spent by them was 15; the senior partner in charge of this case spent a total of merely 2.75 hours on it, and the more junior partner spent only 12.25 hours at rates of $325 and $285 per hour respectively. These hourly rates

for all three attorneys were the non-premium rates normally and customarily charged by the firm to its regular clients during the applicable time periods.

Plaintiff's affidavit in opposition to defendants' showing merely attacks the fees incurred as unreasonable. He contends that if his case were frivolous, it could have been dismissed on the basis of perfunctory motion papers and would not have justified the amount of time spent. Indeed, he suggests the case could have been dismissed by your Honor sua sponte if it were as frivolous as your Honor has ruled. Apparently, plaintiff, having filed a complaint seeking two billion dollars and presenting factual allegations complicated by the fact that he had already brought three related actions in state court which had been dismissed, believes your Honor should have done the job of wading through

his papers and divining whether his case should proceed without benefit of factual or legal briefing. Plaintiff also ignores the fact that his continual submission of papers, including a motion for reconsideration of your Honor's decision after your Honor had explained the problems with his complaint and already ordered Rule 11 sanctions, necessitated additional work by defendants which plaintiff could have avoided. In sum, it was plaintiff who chose to file this case and to pursue it vigorously at every step. That defendants incurred legal fees in fighting his pursuit should not now be claimed by him to have been unnecessary. After thorough review of defendants' attorneys' records, the descriptions of the work done and the resulting papers submitted before your Honor in connection with the matter, I find the time to have been reasonably spent and the fees justified.[1]

As a final matter, it should be noted that plaintiff claims in his affidavit that he is being denied due process of law apparently because a court reporter was not present at a conference I held with the parties and apparently because he has not had a hearing with a court reporter present. At the conference, held December 7, 1988, I told plaintiff that he had the right to respond to the defendants' attorneys' claims in the Bader Affidavit which had been presented seven months earlier and to which he had not yet responded, and we set January 6, 1989 as the due date. Plaintiff, however, insisted on rearguing your Honor's decision to award sanctions, and he demanded that a court reporter be called in. Defendants' attorney objected to the added cost a court reporter would entail. I explained to plaintiff that he could call a court reporter, but that he was not entitled to fee court reporting services and

moreover, under the terms of your Honor's order, plaintiff might be obligated to pay not only for his copy of a transcript but also for one for the defendants. In any event, further proceedings were to await submission of his responsive papers. I emphasized to plaintiff that he was to challenge with specifics the amounts of time and money defendants claimed to have expended, but that he could no longer argue in this court the propriety of your Honor's decision. A review of the plaintiff's affidavit, timely submitted on January 6, shows that he has raised no factual issues that would make an evidentiary hearing appropriate. He challenges conclusorily defendants' statement of fees incurred as unreasonable.[2] His position appears to be summed up by paragraph 19 of the affidavit:

> "19. It is my contention that Simpson Thacher & Bartlett is attempting with the aid of Richard Owen and Sharon Grubin to perpetrate a criminal larceny and the whole lot of them should not go unwhipped of justice."

To be sure, legal representation is costly, and, to be sure, the fees of Simpson Thacher & Bartlett are more costly than the fees certain other lawyers might have charged their clients for this case. However, defendants have the right to use their regular attorneys for any cases they wish, and plaintiff bore the risk of incurring the fees of those attorneys when he brought this case. He should not now be allowed to complain that the cost was higher than it might have been. It might also be noted that the amount sought by defendants represents actual fees and expenses incurred by them. Defendants have not sought and I am not recommending herein that your Honor award any additional amount as sanctions which might be authorized by Fed.

R. Civ. P. 11.

In sum, for all the above reasons, I respectfully recommend that your Honor enter an order awarding to defendants attorney's fees of $16,865.00 and disbursements of $1,457.62, for a total of $18,322.62 to be paid by plaintiff.

Copies of this Report and Recommendation have been mailed this date to the following:

Mr. Delco L. Cornett
161 Lexington Avenue
New York, NY 10016

Bernard E. Jacques, Esq.
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, NY 10017

Caren S. Brutten, Esq.
Assistant Attorney General
State of New York
120 Broadway
New York, NY 10271

The parties are hereby directed that if you have any objections to this Report and Recommendation you must, within ten (10) days from today, make them in writing, file them with the Clerk of the Court and

send copies to the Honorable Richard Owen, to the opposing party and to the undersigned. Failure to file objections within the specified time may waive your right to appeal from any order that will be entered by Judge Owen. See Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986); Wesolek v. Canadair Ltd., 838 F.2d 55 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237 (2d Cir. 1983).

Dated; New York, New York
April 20, 1989

Respectfully submitted,

/s/ Sharon E. Grubin
SHARON E. GRUBIN
United States Magistrate

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[1]Indeed, it appears that more time was spent than that for which fees are requested, and in an effort to not include as part of the request herein time more properly allocable to the various other matters plaintiff was pursuing against defendants, defendants' attorneys appear to have erred on the side of exclusion.

[2]I have reviewed the only two "examples" of the unreasonableness of amounts claimed and find them without merit.

Appendix "E"

Order dated: August 8, 1989

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DELCO L. CORNETT,

PLAINTIFF

v.

MANUFACTUFACTURERS HANOVER TRUST COMPANY, SIMPSON THACHER & BARTLETT, JOHN W. OHLWEILER, SHERI FRUMER, WILLIAM P. MCCOOE, AND JOHN F. MCGILLICUDDY,

DEFENDANTS

87 Civ. 7005 (RO)

ORDER

By: Richard Owen, Judge
United States District Court

The motion is denied.

/s/ Richard Owen
U.S.D.J.
8/4/89

Appendix "F"

Judgment entered: September 11, 1989

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DELCO L. CORNETT, PLAINTIFF - AGAINST - MANUFACTURERS HANOVER TRUST COMPANY, SIMPSON THACHER & BARTLETT, JOHN W. OHLWEILER, SHERI FRUMER, WILLIAM P. MCCOOE AND JOHN F. MCGILL-ICUDDY, DEFENDANTS	87 Civ. 7005 (RO) JUDGMENT #89,2182

This cause came on to be heard on defendants' motion to dismiss the action on the ground that the Complaint fails to state a cause of action, and the Court having granted the said motion, it is hereby

OREDERED, ADJUDGED AND DECREED that the action be dismissed on the merits, and that defendant, Manufacturers Hanover Trust Company, recover costs of $18,322.62.

Dated: New York, New York
August 7, 1989

/s/ Richard Owen
Clerk
United States District Court

This Document was
entered on the docket
on 9-11-89

Appendix "G"

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixteenth day of March one thousand nine hundred and ninety.

Present: HONORABLE AMALYA L. KEARSE,

HONORABLE RICHARD J. CARDAMONE

HONORABLE J. DANIEL MAHONEY,

CIRCUIT JUDGES,

DELCO L. CORNETT,

PLAINTIFF-APPELLANT

v.

MANUFACTURERS HANOVER TRUST COMPANY, SIMPSON THACHER & BARTLETT, JOHN W. OHLWEILER, SHERI FRUMER, WILLIAM P. MCCOOE, JOHN F. MCGILLICUDDY,

DEFENDANTS-APPELLEES

No. 88-7398

Appeal from the United States District Court for the Southern District of New York.

Argued: March 13, 1990
Decided: March 16, 1990

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by plaintiff, pro se and by counsel for defendants.

ON CONSIDERATION WHEREOF, it is hereby ordered, adjudged, and decreed that the judgment of said District Court dismissing the complaint be and it hereby is affirmed substantially for the reasons stated in the Memorandum and Order of Judge Richard Owen, dated April 25, 1989. We find no abuse of discretion in the award of sanctions against plaintiff for the repeated bringing of frivolous actions, see McMahon v. Shearson/American Express, No. 89-7222, slip op. at 1665 (2d Cir. Feb. 14, 1990), and we affirm that decision as well.

The judgment of the district court is in all respects affirmed.

/s/ Amalya L. Kearse
AMALYA L. KEARSE, U.S.C.J.

/s/ Richard J. Cardamone
RICHARD J. CARDAMONE, U.S.C.J.

/s/ J. Daniel Mahoney
J. DANIEL MAHONEY

N.B. THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT.

Appendix "H"

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the thirty-first day of May, one thousand nine hundred and Ninety.

DELCO L CORNETT,	)	
	)	
PLAINTIFF-APPELLANT	)	
	)	Docket
v.	)	Number:
	)	
MANUFACTURERS HANOVER TRUST COMPANY, SIMPSON THACHER & BARTLETT, JOHN W. OHLWEILER, SHERI FRUMER, WILLIAM P. MCCOOE, JOHN F. MCGILLICUDDY,	)	88-7398
	)	
DEFENDANTS-APPELLEES	)	

A petition for rehearing contining a suggestion that the action be heard in banc having been filed herin by Appellant, Pro Se, Delco L. Cornett,

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

ELAINE B. GOLDSMITH
CLERK
By Tina Eve Brien
Chief Deputy Clerk

Appendix "I"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DELCO L. CORNETT,

PLAINTIFF,

- AGAINST -

MANUFACTURERS HANOVER TRUST COMPANY, SIMPSON THACHER & BARTLETT, JOHN W. OHLWEILER, SHERI FRUMER, WILLIAM P. MCCOOE, AND JOHN F. MCGILLICUDDY,

DEFENDANTS,

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INDEX NO. 87 CIV. 7005 (RO)

COMPLAINT

JURY TRIAL DEMANDED

1. PLAINTIFF - DELCO L. CORNETT
161 LEXINGTON AVENUE
NEW YORK, N.Y. 10016

2. DEFENDANTS - MANUFACTURERS HANOVER TRUST COMPANY
270 PARK AVENUE
NEW YORK, N.Y. 10017

SIMPSON THACHER & BARTLETT
ONE BATTERY PARK PLAZA
NEW YORK, N.Y. 10004

JOHN W. OHLWEILER
ONE BATTERY PARK PLAZA
NEW YORK, N.Y. 10004

SHERI FRUMER
ONE BATTERY PARK PLAZA
NEW YORK, N.Y. 10004

WILLIAM P. MCCOOE
60 CENTRE STREET
NEW YORK, N.Y. 10007

JOHN F. MCGILLICUDDY
270 PARK AVENUE
NEW YORK, N.Y. 10017

3. THE FEDERAL COURT DERIVES JURISDICTION UNDER TITLE 18 USC § 1961, et. seq. AND FROM TITLE 42 USC § 1983, THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT AND THE CIVIL RIGHTS ACT.

4. THAT ON OR ABOUT JANUARY 20, 1987 I HAND-DELIVERED A COPY OF THE LETTER ATTACHED HEREWITH AS EXHIBIT "A" TO JOHN F. MCGILLICUDDY AND LEFT SAME WITH HIS MAIL DEPARTMENT.

5. THAT EXHIBIT "A" SETS FORTH VARIOUS FELONIES COMMITTED BY AN OFFICER OF MANUFACTURERS HANOVER TRUST COMPANY.

6. THAT WITHIN THE LAST TEN YEARS MANUFACTURERS HANOVER TRUST COMPANY HAS COMMITTED TWO OR MORE ACTS WHICH ARE THE REQUISITE PREDICATE ACTS NECESSARY TO INVOKE THE RICO ACT, TO WIT MANUFACTURERS

HANOVER TRUST COMPANY VIOLATED THE CURRENCY REPORTING REQUIREMENTS AND PAID A SUBSTANTIAL FINE FOR VIOLATION OF SAME.

7. THAT EACH OF THE DEFENDANTS DID AGREE, CONSPIRE, AND WORK IN CONCERT TO AID AND ABET THE CRIMINAL ACTS WHICH I DETAILED IN MY LETTER TO JOHN F. MCGILLICUDDY, BY VARIOUS ILLICIT ACTS WHICH HAD THE EFFECT OF OBSTRUCTING JUSTICE.

8. THAT THE DEFENDANTS DID ATTEMPT TO FILE FALSE AND MISLEADING DOCUMENTS WITH THE NEW YORK STATE SUPREME COURT WHICH STATED THAT MY CHARGES OF CRIMINAL ACTS BY AN OFFICER OF MANUFACTURERS HANOVER TRUST COMPANY WERE FABRICATIONS.

9. THAT IN FURTHERENCE OF THEIR SCHEME THEY USED THE UNITED STATES POSTAL SYSTEM BY MAILING DOCUMENTS TO ME WHICH CONTAINED STATEMENTS STATING THAT MY CHARGES WERE FABRICATIONS.

10. THAT THE DEFENDANTS DID AGREE, CONSPIRE, AND WORK IN CONCERT TO THREATEN AND TAMPER

WITH A WITNESS TO FELONIOUS ACTS, TO WIT, SHERI FRUMER MADE AN ORAL MOTION TO WILLIAM P. MCCOOE IN THE NEW YORK STATE SUPREME COURT THAT I BE PLACED UNDER AN INJUNCTION PROHIBITING ME FROM HAVING ACCESS TO THE FEDERAL COURTS TO PROSECUTE THIS ACTION WHICH WILLIAM P. MCCOOE ATTEMPTED TO DO DESPITE THE FACT THAT I HAVE A CONSTITUTIONAL RIGHT TO HAVE ACCESS TO THE FEDERAL COURT.

11. WHEREFORE, PLAINTIFF DEMANDS:

A. AN ORDER BY THE FEDERAL COURT PROHIBITING WILLIAM P. MCCOOE FROM INTERFERING WITH MY CONSTITUTIONAL RIGHT OF ACCESS TO THE FEDERAL COURT.

B. $1,000,000,000.00 (ONE BILLION DOLLARS) FROM THE NON-STATE DEFENDANTS IN COMPENSATORY AND $1,000,000,000.00 (ONE BILLION DOLLARS) IN PUNITIVE DAMAGES, AND FOR SUCH FURTHER AND OTHER RELIEF AS TO THE COURT MAY SEEM APPROPRIATE

/s/ DELCO L. CORNETT
DELCO L. CORNETT
161 LEXINGTON AVENUE
NEW YORK, N.Y. 10016

EXHIBIT "A"

DELCO L. CORNETT
161 LEXINGTON AVENUE
NEW YORK, N.Y. 10016
JANUARY 20, 1987

JOHN F. MCGILLICUDDY
CHAIRMAN OF THE BOARD
MANUFACTURERS HANOVER CORPORATION
270 PARK AVENUE
NEW YORK, N.Y. 10017

DEAR MR. MCGILLICUDDY:

I AM WRITING THIS LETTER PURSUANT TO THE MANUFACTURERS HANOVER CORPORATION'S PUBLICATION ENTITLED "CODE OF CONDUCT". ON PAGE 21 IT IS STATED

> "IF ANY STAFF MEMBER HAS REASON TO BELIEVE THAT ANY SITUATION MAY HAVE RESULTED IN ANY PROVISION OF THE CODE OF CONDUCT BEING VIOLATED, WHETHER BY THAT STAFF MEMBER OR BY ANOTHER, THE MATTER MUST BE REPORTED PROMPTLY TO THE GENERAL AUDITOR OF THE CORPORATION."

ON PAGE 17 OF THE "CODE OF CONDUCT" IT IS STATED,

> "THE ACTIVITIES OF THE CORPORATION (MANUFACTURERS HANOVER CORPORATION, ITS DIRECT AND INDIRECT SUBSIDIARIES) MUST ALWAYS BE IN FULL COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS..."

I AM A FORMER EMPLOYEE WHO ON DECEMBER 19, 1986 FILED A "STATEMENT OF PROBLEM" WITH MR. WILLIAM FISHER, VICE PRESIDENT OF PERSONNEL OF MANUFACTURERS HANOVER TRUST CO. AT 55 WATER STREET. THIS WAS BASED UPON THE CRIMINAL ACTIVITY OF AN OFFICER OF MANUFACTURERS HANOVER TRUST CO. NAMED TERRY GREENBERG, ASSISTANT SECRETARY. MR. FISHER SAID THAT BASED UPON INSTRUCTIONS FROM CORPORATE HEAD-QUARTERS NO ACTION WOULD BE TAKEN ON MY COMPLAINT AND THAT MY EMPLOYMENT WITH MHT WAS ENDING EFFECTIVELY IMMEDIATELY.

MY EMPLOYMENT AT MANUFACTURERS HANOVER TRUST CO. BEGAN IN APRIL 1986 WHEN I WAS HIRED AS A DOCUMENT CHECKER IN THE LETTER OF CREDIT DEPARTMENT AT 4 NEW YORK PLAZA LOCATED ON THE 12TH FLOOR.

A LETTER OF CREDIT IS THE BANK'S UNDERTAKING TO SHIPPER (BENEFICIARY OF THE LETTER OF CREDIT) THAT IF SHIPPING DOCUMENTS CONFORMING TO

THE REQUIREMENTS OF THE L/C ARE PRESENTED TO THE BANK PAYMENT FOR THE MERCHANDISE WILL BE MADE BY THE BANK. USUALLY THE BENEFICIARY OF THE L/C WILL PRESENT HIS DOCUMENTS TO HIS LOCAL BANK WHICH IN TURN FORWARDS THEM TO MHT FOR FINAL PAYMENT. WHEN THE DOCUMENTS ARRIVE AT MHT THEY ARE EXAMINED BY A DOCUMENT CHECKER TO INSURE THAT ALL OF THE TERMS OF THE LETTER OF CREDIT HAVE BEEN COMPLIED WITH. IF THERE ARE NO DISCREPANCIES PAYMENT IS MADE ACCORDING TO THE INSTRUCTIONS FOUND ON THEIR COVER LETTER. IF THE DOCUMENTS DO NOT MEET ALL OF THE TERMS OF THE CREDIT THEN THE BANK'S CUSTOMER IS NOTIFIED OF THE DISCREPANCIES AND CAN WAIVE THE DISCREPANCIES OR REJECT THE DOCUMENTS WHICH ARE THEN HELD AT THE DISPOSAL OF THE SENDING BANK.

IN LATE NOVEMBER OR THEREABOUT I OBSERVED TERRY GREENBERG AN OFFICER OF MHT CO. COMMITT LARCENY IN EXCESS OF $2 MILLION AND WIRE FRAUD WHICH IS A SERIOUS FELONY UNDER FEDERAL LAW.

AS PREVIOUSLY INDICATED WHEN I ATTEMPTED TO BRING THE MATTER TO THE ATTENTION OF HIGHER MANAGEMENT MY EMPLOYMENT WAS SUMMARILY ENDED SO THAT AN INVESTIGATION OF TERRY GREENBERG'S CRIMINAL MALEFACTIONS WOULD NOT BE CARRIED OUT.

STATEMENT OF FACTS

MY WORK AT MHT CO. WAS ADJACENT TO THAT OF MR. JOHNNY LEACH WHO HANDLED CORRESPONDENCE AND ADJUSTMENTS IN THE IMPORT LETTER OF CREDIT DEPT. MR. LEACH SAID TO ME THAT THE BANK WAS IN A LOT OF TROUBLE. ONE OF THE BANK'S CUSTOMERS HAD REJECTED A SET OF DOCUMENTS DUE TO THE FACT THAT THE DOCUMENTS CONTAINED A DISCREDPANCY WHICH MHT HAD FAILED TO NOTIFY

THEM OF PRIOR TO EFFECTING PAYMENT TO THE SENDING BANK LOCATED IN JAPAN. THE DOCUMENTS WERE FOR AN AMOUNT IN EXCESS OF $2 MILLION AND HAD BEEN HANDLED AT MHT BY A PERSON NAMED WENDY STRAUSS. WENDY STRAUSS HAD BEEN DERELICT AND NEGLIGENT IN HER DUTY AND HAD NOT INFORMED THE BANK'S CUSTOMER OF THE DISCREDPANCY. IT SHOULD BE NOTED THAT MHT CHARGES AN EXAMINATION FEE BASED UPON THE DOLLAR VALUE OF THE DOCUMENTS WHICH IN THE CASE COULD RUN INTO HUNDREDS IF NOT THOUSANDS OF DOLLARS. WENDY STRAUSS HAD CHARGED THE CUSTOMER THE EXAMINATION FEE BUT FAILED TO DO HER JOB TO EARN THE FEE. WENDY STRAUSS PAID THE SENDING BANK IN EXCESS OF $2 MILLION BY CREDITING THEIR ACCOUNT AND SENDING THEM A TELEX CONFIRMING SAID CREDIT. UNDER THE UNIFORM CUSTOMS AND PRACTICES 400 WHICH IS THE LEGAL RULES FOR LETTERS OF CREDIT PAYMENT IS FINAL AND WITHOUT RECOURSE.

THE REASON MR. LEACH WAS CONCERNED WAS THAT SINCE THE SENDING BANK HAD BEEN PAID AND PAYMENT WAS FINAL WITHOUT RECOURSE AND THE BANK'S CUSTOMER WAS ENTITLED TO REJECT THE DOCUMENTS THIS MEANT THAT MHT WAS OUT OR LOST $2 MILLION.

MR. LEACH SAID HE WAS GOING TO GO TO RETRIEVE THE REJECTED DOCUMENTS. WHEN HE RETURNED TERRY GREENBERG CAME TO HIS DESK AND DISCUSSED THE SITUATION WITH HIM.

I THEN HEARD TERRY GREENBERG INSTRUCT MR. LEACH TO DEBIT $2 MILLION FROM THE ACCOUNT OF THE SENDING BANK AND TO SEND A TELEX TO THE SENDING BANK STATING,

> "WE ARE DEBITING YOUR ACCOUNT $2 MILLION SINCE PAYMENT WAS ERRONEOUSLY MADE PRIOR TO EXAMINATION OF THE DOCUMENTS."

OR WORDS TO THAT EFFECT.

THAT JOHNNY LEACH DID CARRY OUR TERRY

GREENBERG'S INSTRUCTION.

CONCLUSION

THIS CONSTITUTED LARCENY, CRIMINAL CONVERSION AND WIRE FRAUD.

OF COURSE, MANUFACTURERS HANOVER TRUST CO. HAD NO LEGAL CLAIM ON THE MONEY IN THE SENDING BANK'S ACCOUNT. THE FACT THAT WENDY STRAUSS PAID THE SENDING BANK AFTER NEGLECTING TO PICK UP A DISCREPANCY PUT ALL THE LIABILITY AND RESPONSIBILITY ON MHT.

KNOWING FULL WELL THAT HE WAS STEALING MONEY TERRY GREENBERG LOOTED THE SENDING BANK'S ACCOUNT OF IN EXCESS OF $2 MILLION DOLLARS AND ATTEMPTED TO DECEIVE THE SENDING BANK A FALSE TELEX TO HIDE HIS CRIMINAL THEFT.

AMAZINGLY ENOUGH MANUFACTURERS HANOVER TRUST CO. HAS NEVER PAID THE FEDERAL, STATE, AND LOCAL TAXES DUE ON THE MONEY STOLEN BY TERRY GREENBERG. WITH THE NATIONAL DEFICIT SO HIGH I

THINK THE IRS WILL BE HAPPY TO LEARN OF THE WILFUL TAX EVASION OF TERRY GREENBERG. RECENTLY HARRY CLAIBORNE A FEDERAL JUDGE WAS IMPEACHED BY THE SENATE FOR EVADING TAXES AND A COPY OF THIS LETTER IS BEING SENT TO ALL APPROPRIATE TAX ANDLEGAL AUTHORITIES.

I HEREBY MAKE MYSELF AVAILABLE TO GIVE FURTHER DETAILS AND TO ELABORATE ON ANY AREA YOU MAY WISH TO INVESTIGATE TO DETERMINE IF ANY FURTHER CRIMES WERE PERPETRATED BY TERRY GREENBERG.

SINCERELY YOURS,

/s/ DELCO L. CORNETT
DELCO L. CORNETT